

Message

From: Doyle, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1B7C5B6B63B54E1CB4044A0A8CE993A6-DOYLE, JAMES]
Sent: 1/28/2021 5:31:51 PM
To: Carl Garvey [cgarvey@racertrust.org]; Ludmer, Margo [ludmer.margo@epa.gov]; Cirillo, Argie [Cirillo.Argie@epa.gov]
CC: Lieber, Thomas [Lieber.Thomas@epa.gov]
Subject: RE: RACER Sur-Reply

Let's discuss. This is LCDM exclusively, correct? Or does it implicate the IFG facility OU too? Wondering about Argie's participation... Tom may want to be brought in at this juncture.

I cannot open the attachment yet (scanning).

From: Carl Garvey <cgarvey@racertrust.org>
Sent: Thursday, January 28, 2021 12:21 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>; Cirillo, Argie <Cirillo.Argie@epa.gov>; Doyle, James <Doyle.James@epa.gov>
Subject: RACER Sur-Reply

Hi Margo, Argie, and Jim:

Would Region 2 (through Main Justice or the USAO) be willing to file an amicus brief with the 2nd Circuit to clarify that at the outset of USEPA's CERCLA enforcement actions, it typically does not perform allocation functions -- instead it simply issues notifications of potential liability to PRPs and then lets CERCLA's joint and several liability scheme work among the named PRPs.

Such an approach for PRP-directed allocation is set forth in the attached Guidance.

The Defendant-Appellees in RACER's cost recovery/contribution case appear to believe that Region 2's enforcement actions will resolve the need for a PRP-led allocation process. As you know, RACER and the Defendant-Appellees who remain in this case will still need at least the NDNY District Court's help to resolve allocation issues if/when the parties cannot agree on those.

Perhaps the Defendant-Appellees believe that Region 2 will be issuing (or needs to issue) something more than Special Notice Letters, i.e., 106 Orders including "Coordinate & Cooperate Orders"?

Please let me know if you'd like to have a call to discuss RACER's interest in having USEPA file this amicus brief. Thanks for considering this approach.

--Carl